THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.4471 OF 2006

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Dated: 07-03-2006

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Between

Davinder Singh, S/o. Late Mohinder Singh,

Occ: Business, R/o. B-103 & 104,

Shantisikhara Apartments, Somajiguda,

Hyderabad and others.

...PETITIONER

AND

Municipal Corporation of Hyderabad,

Rep. by its Commissioner,

Hyderabad and another.

...RESPONDENTS

ORDER:

Petitioners seeks a Writ of Mandamus to declare the notice dated 03-03-2006 in letter No.786/TPS/C5/MCH/2006 issued under Section 636 of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act') issued by the first respondent as illegal and arbitrary.

Heard the learned counsel appearing for the petitioner as well as the learned standing counsel appearing for the respondent.

Learned counsel for the petitioners submits that the petitioners are the owners of the Garages in Shantisikhara Residential Apartments situated at Somajiguda, Hyderabad and the builder has obtained permission from the municipal corporation in the year 1984 both for commercial as well as residential apartments and sold the garage space and apartments to various individuals in 1984 by means of registered sale deeds. He further submits that the garages are being used as store room, servant room and some of them have opened offices and there are a handful of commercial shops, which cater to the needs of the residents of the flats and there is no complaint from any quarter with regard to the use of garage as offices as there is enough space for parking the vehicles. While so, the first respondent without issuing any show cause notice, issued a notice in letter No.786/TPS/C5/MCH/2006, dated 03-03-2006 under Section 636 of Hyderabad Municipal Corporation Act, 1955, stating that the petitioners have made constructions not covered by the sanctioned plan and converted parking space in cellar floor other than parking and carried out the said construction which is unauthorized and causing lot of inconvenience to the inmates in the building and also to the visitors of the building, resulting in vehicles being parked on the road, creating lot of traffic congestion, accident and public nuisance and also that the High Court in suo-motto contempt case in C.C.No.101 of 1996, dated 28-02-1996 ordered that steps be taken immediately for creation for parking areas with a view to reduce traffic congestion being created on account of cars being parked on roads for want of parking within the premises. Accordingly, the petitioners were directed to remove the said unauthorized structure within 24 hours.

I am of the opinion that issuing notice under Section 636 of the Hyderabad Municipal Corporation Act, 1955 is in respect of the buildings, which have been constructed after obtaining permission for construction of the cellar, ground floor and upper floors, the relevant provision to issue a notice is under Section 452 of the Act. If that is the case, it is for the respondents to point out whether the petitioners have converted the parking place into shops. If there is any deviation or conversion, it is for the respondents to issue a show cause notice under Section 452 of the Act. But, without issuing any show cause notice, straight away a notice under Section 636 of the Act, as if the constructions have been made without any permission, has been issued directing the petitioners to remove the structures.

Having regard to the facts and circumstances of the case, the impugned notice dated 03-

03-2006 in Lr.No.786/TPS/C5/MCH/2006 is directed to be treated as a show cause notice only permitting the petitioners to file a representation/explanation within one week from the date of receipt of a copy of this order and till such representation/explanation is considered and appropriate orders are passed and communicated to the petitioners, the respondents shall not remove or demolish the premises of the petitioners.

The writ petition is disposed of accordingly.

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V.ESWARAIAH, J

March 7, 2006

Note: Furnish C.C. of the order by 08.03.2006

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DSK